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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Letter dated 26 March 2001 from the Permanent Representative of Kuwait to the United Nations Office at Geneva addressed to the Chairperson of the Commission on Human Rights

According to the instructions of the Government of the State of Kuwait, I have the honour to transmit the response of my Government to the letter dated 4 December 2000 addressed to the Office of the High Commissioner for Human Rights from the Permanent Representative of Iraq, in which the latter responds to the interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, as contained in document A/55/294.

The response of my Government addresses the items concerning the Kuwaiti prisoners of war and Iraqi missing persons, as contained in document A/C.3/55/5 dated 6 November 2000.

I should be grateful if you would have this letter and its annex* circulated as a document of the fifth-seventh session of the Commission on Human Rights.

(Signed): Dharar A.R. RAZZOOQI
Ambassador
Permanent Representative

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* Reproduced as received, in Arabic and English only.

Annex

On 2 August 1990, the Iraqi armed forces carried out their iniquitous invasion of the territory of the State of Kuwait in an act of aggression that was unparalleled in the history of mankind and constituted one of the most odious crimes and grave violations of human rights and fundamental freedoms documented in official and unofficial reports in past centuries, particularly in the light of the observations of the Special Rapporteur on the situation of human rights in Kuwait under Iraqi occupation, as contained in document E/CN.4/1992/26. These violations continued for a period of seven months.

In a flagrant violation of the Geneva Conventions, the Iraqi forces, constituting the "Occupying Power", prevented the International Committee of the Red Cross and other humanitarian organizations concerned from entering the State of Kuwait during the period of the occupation in order to cover up the barbaric acts that the invading Iraqi forces were committing, including the murder of innocent civilians, the displacement of foreign residents and the expulsion of citizens and residents from their homes so that the latter could be used for military purposes, as well as the theft and pillage of State property and property owned by citizens and residents, the commission of acts of aggression against diplomatic missions in Kuwait, arbitrary and summary executions, torture, arbitrary arrests and detentions and the transfer of detainees to detention centres in Iraq from which a number of them were not released after the liberation of Kuwait.

In view of the serious threat that these violations posed to innocent civilians, the United Nations Security Council adopted a number of resolutions under the terms of Chapter VII of the Charter of the United Nations. Some of these resolutions, such as 686 (1991), 687 (1991), 706 (1991) and 1284 (1999), focused on the question of prisoners and called upon Iraq to, inter alia:

- Immediately release under the auspices of the International Committee of the Red Cross, Red Cross Societies or Red Crescent Societies all Kuwaiti and third-State nationals detained by Iraq and return the remains of any deceased Kuwaiti and third-State nationals so detained.
- Arrange for immediate access to and release of all prisoners of war under the auspices of the International Committee of the Red Cross and return the remains of any deceased personnel of the forces of Kuwait and the Member States cooperating with Kuwait.
- Extend all necessary cooperation to the International Committee of the Red Cross by providing lists of such persons, facilitating the access of the International Committee to all such persons wherever located or detained and facilitating the search by the International Committee for those Kuwaiti and third-State nationals still unaccounted for.

On 28 February 1991, after the expulsion of the invading Iraqi forces by the forces cooperating in the liberation of the territory of Kuwait, the International Committee of the Red Cross and other humanitarian organizations were permitted to enter the State of Kuwait to discharge their humanitarian functions. In accordance with Security Council resolution 686 of 2 March 1991, a Special Commission was formed under the auspices of the International Committee of the Red Cross to ensure the rapid repatriation of prisoners on both sides. That Commission, which was initially known as the "Riyadh Commission", is currently known as the Tripartite Commission since its members are from the Coalition States (France, Kuwait, the Kingdom of Saudi Arabia, the United Kingdom and the United States of America), Iraq and the International Committee of the Red Cross, by which it is chaired.

Although the Riyadh meetings held in March 1991 led to the handover of a number of prisoners on both sides to the International Committee of the Red Cross, many families reported that their prisoners had not been returned. Accordingly, a specific plan of action was formulated on 12 April 1991 for the tracing and repatriation of civilian prisoners and missing persons and the return of the remains of prisoners who were believed to have been killed during the occupation.

The Kuwaiti authorities focused their endeavours on the compilation of documented and substantiated individual files in accordance with the above-mentioned plan. However, Iraq obstructed the work of the Tripartite Commission by boycotting its meetings for more than two full years (from the end of 1991 to mid-1994).

When Iraq resumed its participation in the meetings of the Tripartite Commission in July 1994, Kuwait had already submitted more than 600 individual files since the beginning of 1993, most of which were supported by the testimonies of numerous eyewitnesses and official arrest records. These complete files that the Government of the State of Kuwait submitted to the Tripartite Commission were commended by the International Committee of the Red Cross and by international officials such as Mr. Walter Kalin, the Special Rapporteur on the situation of human rights in Kuwait under Iraqi occupation, Mr. Van der Stoel, the former Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis, the present Special Rapporteur on the situation of human rights in Iraq, and Ambassador Yuli Vorontsov, the High-Level Coordinator appointed by the Secretary-General of the United Nations.

Of the individual files submitted by the State of Kuwait, 35 concerned nationals of third States (India, Bahrain, the Sultanate of Oman, Lebanon, Syria, Egypt, Iran and Saudi Arabia).

In December 1994, the Tripartite Commission established a Technical Subcommittee to speed up the examination of the files and, if necessary, hear eyewitnesses. This Subcommittee held 36 meetings, mostly on the border between Iraq and Kuwait, and the Tripartite Commission held 21 meetings in Geneva. Hence, Iraq participated in a total of 57 meetings under the auspices of the International Committee of the Red Cross on the issue of prisoners.

During these meetings, Iraq acknowledged 126 of the files submitted by the Government of the State of Kuwait. However, instead of responding by clarifying the fate of the prisoners, it merely provided general replies, even though those files were supported by testimony and evidence proving that the Iraqi authorities had detained those prisoners. The International Committee of the Red Cross designated these as "preliminary replies".

After studying the complete and documented files submitted by the Government of the State of Kuwait and the replies submitted by Iraq, Mr. Andreas Mavrommatis, the Special Rapporteur, stated in his report to this fifty-seventh session of the Commission on Human Rights

that the information which the Government of the State of Kuwait had gathered, and which included some comparative studies and documents, confirmed that the Government of Iraq was in a position to clarify the fate and/or whereabouts of the Kuwaiti prisoners.

Unfortunately, all the meetings of the Tripartite Commission and the Technical Subcommittee have so far failed to achieve the desired results, since the fate of 605 Kuwaiti and third-State prisoners were not clarified by the replies of the Iraqi regime which, at the end of 1998, once again boycotted the work of the Tripartite Commission and its Technical Subcommittee for purely political reasons.

In spite of Iraq's boycott of the work of the Tripartite Commission and its refusal to cooperate with the Special Rapporteur on the situation of human rights in Iraq and the Coordinator of the Secretary-General of the United Nations for matters relating to the return of Kuwaiti property and the repatriation of all Kuwaiti and third-State nationals or their remains, the Government of Kuwait has diligently supported those channels, which were established to determine the fate of those prisoners and alleviate the suffering of their families and loved ones.

Since Iraq's boycott of the work of the Tripartite Commission and its Technical Subcommittee in December 1998, the Coalition members of the Tripartite Commission have continued to hold periodic meetings with the International Committee of the Red Cross, the most recent of which was the seventh consultative meeting held in Geneva on 15 March 2001 at which the Coalition States informed the International Committee of the Red Cross of their desire to hold a meeting of the Tripartite Commission on 19 July 2001 and stressed the importance of persuading Iraq to participate in that meeting.

The State of Kuwait's first and only concern is of a humanitarian nature, namely to secure the release of the prisoners as soon as possible in order to relieve the anguish of their families.

In contrast, Iraq is doing its utmost to politicize this issue in the hope of finding a pretext to evade its international obligations, which are absolutely clear.

This was confirmed by the current Special Rapporteur on the situation of human rights in Iraq in his report submitted to the fifty-fifth session of the General Assembly of the United Nations (A/55/294), in which he stated that: "What appears to be lacking is the necessary political will on the part of the Iraqi authorities to participate in the work and to examine speedily and effectively each and every case before the Commission".

In his report, the Special Rapporteur further stated that: "Enough material was produced to support the Kuwaiti claim that the Government of Iraq is in a position to clarify the fate and/or whereabouts of Kuwaitis unaccounted for".

The Special Rapporteur also invited the Government of Iraq to resume cooperation with the Tripartite Commission and the Technical Subcommittee established to facilitate work on this humanitarian issue.

In his report to the members of the Security Council (S/2000/347), Ambassador Yuli Vorontsov, the High-Level Coordinator appointed by the Secretary-General of the United Nations in accordance with operative paragraph 14 of Security Council resolution 1284 (1999) for matters relating to the return of Kuwaiti property and the repatriation or return of all Kuwaiti and third country nationals or their remains, stated that Iraq had refused to meet and cooperate with him, had not provided any information concerning prisoners since 1998 and had been refusing to participate in the work of the Tripartite Commission since December 1998.

Ambassador Vorontsov, the Coordinator, also made it clear that Iraq's compliance with its obligations would demonstrate respect for the principles of international humanitarian law and its cooperation in putting an end to that long-standing human tragedy would not be inconsistent with Iraq's own stated assurances that it regards the problem as a humanitarian one.

The State of Kuwait is closely monitoring developments on this humanitarian issue and will continue to intensify its endeavours to settle this issue. It will never allow Iraq to evade its obligations, since the settlement of humanitarian issues is not subject to political considerations pending between Iraq and the Security Council.

In the light of the above, the Iraqi authorities are called upon to fulfil their moral and legal responsibilities by:

- Immediately revealing the names of the Kuwaiti and third-State prisoners who are still alive in order to relieve the anguish of their families, since it is well known that a feeling of uncertainty concerning the fate of loved ones causes unbearable grief and suffering.
- Permitting humanitarian organizations, such as the International Committee of the Red Cross, to visit the living prisoners and furnishing proof of the death of the others,

- Beginning to deal, in a prompt and diligent manner, with all the cases and files submitted by the State of Kuwait, bearing in mind the fact that eight years have passed since they were officially submitted. Iraq should also expedite the tracing process and submit all the available information without further procrastination or delay.
- Permitting the International Committee of the Red Cross to discharge its functions in Iraqi prisons and other places of detention in conformity with the Geneva Conventions and the working methods applied by that organization.

With regard to the question of missing Iraqis, the Security Council resolutions made no mention of this matter since the Iraqi authorities were occupying the territory of Kuwait at the time and, consequently, the Kuwait authorities were not responsible for Iraqi missing persons. Nevertheless, on humanitarian grounds, the Government of the State of Kuwait has voluntarily expressed its willingness to cooperate in that regard under the auspices of the Tripartite Commission, the work of which Iraq is currently boycotting, thereby confirming Iraq's lack of serious interest in this humanitarian issue.

In his report submitted to the Security Council (S/2000/1997), the High-Level Coordinator appointed by the Secretary-General stated that: "As the Government of Iraq claims to seek a resolution to the issue of its own missing nationals, it is essential that it exercise an appropriate and sensitive understanding of the position held by the Government of Kuwait and other countries concerned. Above all, the suffering of detained and missing persons and their families finally deserves attention by the authorities in Iraq".

The Government of the State of Kuwait has undertaken to cooperate fully with the Special Rapporteur on the situation of human rights in Iraq with a view to settling this issue by allowing him to visit Kuwaiti places of detention at any time and without any restrictions. This undertaking was honoured when his assistant requested permission to make an unannounced inspection of places of detention and prisons during his visit to the State of Kuwait in July 2000.

In conclusion, the international community is called upon to intensify its endeavours to find ways to settle this humanitarian issue, which has been prolonged as a result of Iraq's persistent evasion of its legal and humanitarian obligations.